IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

(Chapter VIII, Rule 32(2) (b)

Description of Case

Criminal Appeal No. 3 of 2003

And

Criminal Appeal No. 4 of 2003

Date of decision : 15th June, 2007

A.F.R. (Approved for Reporting)

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Not approved for reporting

Date : 15.06.2007 Initials of Judge

Note : Bench Reader will attach this at the top of the first page of the judgment when it is put up before the Judge for signature.

HIGH COURT OF UTTARAKHAND, AT NAINITAL

Criminal Appeal No.3 of 2003

1. Harbans Singh S/o Dilip Singh
   R/o village Bandiya
   P.S. Kichha
   District U.S. Nagar
2. Jaswant Singh S/o Pratap Singh
   R/o village Bandiya
   P.S. Kichha
   District U.S. Nagar ……Appellant

Versus

State … Respondent

AND

Criminal Appeal No.4 of 2003

1. Jagdeep Singh @ Deepa
   S/o Harbans Singh
   R/o village Bandiya
   P.S. Kichha
   District U.S. Nagar
2. Manjeet Singh S/o Jaswant Singh
   R/o village Bandiya
   P.S. Kichha
   District U.S. Nagar ……Appellant

Versus

State … Respondent

Delivery of Judgment : 15th June, 2007

Mr. S. K. Agarwal, senior Advocate with Sri Rajendra Kotiyal Advocate for the appellants-Jagdeep Singh @ Deepa and Manjeet Singh.
Mr. Mohit Chaudhary, Advocate for the appellants-Harbans Singh and Jaswant Singh.
Mr. Amit Bhatt, Addl. Government Advocate for the respondent-State with Mr. D. K. Sharma, Advocate for the complainant.

Coram: Hon'ble Rajeev Gupta, C.J.
Hon'ble J. C. S. Rawat, J.

Per Hon'ble J.C.S. Rawat, J.

1. Since both criminal appeals have arisen out of the common impugned judgment & order dated 09.12.2002 passed by the Addl. Sessions Judge, U. S. Nagar in S.T. No.35/2002, S.T. No.36/2002 and S.T. No.37/2002, hence both appeals have been heard together and are

being disposed of by this common judgment. By the impugned judgment and order, the appellants-Jagdeep @ Deepa and Manjeet Singh were convicted under section 302 IPC @ section 25 Arms Act and each of them were sentenced to undergo imprisonment for life and R.I. for two years respectively. The appellants Harbans Singh and Jaswant Singh were convicted and sentenced to imprisonment for life under section 302 IPC read with section 109 IPC.

2. The facts, in nutshell, are that on 30.10.2001 at 7:30pm the informant Gurbachan Singh lodged a written report Ex.ka.1 at the police station Kichha alleging therein that the same day at 7pm he was travelling from Kichha Bazar to his house as a pillion rider on the motorcycle, which was being driven by his son Gurjeet Singh (deceased). When they reached near Kichha railway station the appellants-accused came at the spot in a car bearing No.HR06-G2165 and stopped the car in front of their motorcycle. The appellants-accused asked him to give the petrol pump to them, otherwise they would grab it. Thereafter, they started firing upon his son-Gurjeet Singh, due to which his son Gurjeet Singh sustained fire-arm injuries. Gurjeet Singh succumbed to his injuries at the spot. The incident was witnessed by Bhagat Singh, Deedar Singh, Kuldeep Singh and Ashok Kumar. On the basis of the written report, a case was registered against the accused persons. The Investigating Officer started the investigation and sent the dead body for postmortem. He took the sample of blood stained earth and plain earth from the place of occurrence. He also took the motorcycle into his

possession. After completing the investigation, the Investigating Officer submitted the chargesheet before the court against the appellants Jagdeep Singh @ Deepa and Manjeet Sngh under section 25 Arms Act. A separate chargesheet was also filed against the appellants, namely Jagdeep Singh @ Deepa, Manjeet Singh, Harbans Singh and Jaswant Singh under section 302 IPC.

3. After submission of chargesheet the appellants-accused were committed to the court of Sessions for trial and the trial court framed charges against the accused persons. They denied the charges levelled against them and claimed their trial.

4. The prosecution in support of its case examined as many as seven witnesses, out of which, Gurbachan Singh PW1-informant and Deedar Singh PW2 are eye witnesses of the incident. Amar Kumar PW3 is a formal witness who proved the panchnama of the deceased. Dr. S. K. Mishra PW4 has proved the postmortem report of the deceased. S.I. –Govind Ballabh Joshi PW5 has proved the chick report and G.D. entry Ex.ka.4 & 5 respectively. He also proved the chick report under section 25 Arms Act. S.I.–Ram Kishore PW6 investigated the case under section 25 Arms Act and he proved the site plan Ex.ka.7 & 8. He filed the chargesheets Ex.ka.9 & 10 under section 25 Arms Act. Inspector Harish Mehra PW7 was the Investigating Officer of this case. He arrested the appellants Harbans Singh and Jaswant Singh on 03.11.2001. On 11.11.2001 he arrested the appellants Jagdeep @ Deepa and Manjeet Singh. After completing the

investigation, the I.O. submitted the chargesheet against the accused persons.

5. The accused persons were examined u/s 313 Cr.P.C. and they have pleaded no guilty to the offence. They have stated that they have been falsely implicated in this case due to enmity and political reasons.

6. The learned trial court on appreciation of the evidence held the appellants guilty and convicted and sentenced them as mentioned above.

7. We have heard learned counsel for the appellants and learned Addl. Government Advocate for the respondent-State. Perused the record carefully.

8. At the outset, it needs to be mentioned here that it is not disputed that the deceased Gurjeet Singh died on account of fire-arm injuries sustained by him on the date of occurrence. Dr. S. K. Mishra (PW4), Medical Officer conducted the postmortem of deceased-Gurjeet Singh on 31.10.2001 at 11a.m. and found following ante-mortem injuries on the person of the deceased:-

(i) Wound of entry :- about 2 x 3cm round, outer left axilliary line about 6cm below axilla. Margins inverted blackening and tattooing present. 7th & 9th ribs fractured. In coming out through the wound over right axillary 6 x 6cm about 8cm below axilla right on exploration track. Wound of right asulal nerve chest …….

(ii) Wound of entry :- 3 x 3cm round wounds left side of back at the medial border of scapula. Having blackening and tattoing with inverted margins probe is going upto the vertebral

column. Exploring the wound many pellets were present. .....

(iii) Multiple abraded contusions

(iv) Contusion 6 x 6cm.

(V) Lacerated wound.

In the opinion of Medical Officer, the death of the deceased was caused due to shock and haemorrhage resulting from the ante-mortem fire-arm injury nos.1 & 2. Thus, it is amply established that deceased-Gurjeet Singh met a homicidal death on account of fire-arm injuries sustained by him.

9. It is admitted case of the parties that the deceased Gurjeet Singh was the son of Gurbachan Singh PW1. Deedar Singh PW2 is the nephew of Gurbachan Singh PW1. It is also admitted that the parties are known to each other since before the date of incident.

10. Now, we have to consider whether the appellants-accused were responsible for causing death of the deceased. The prosecution had adduced the evidence of the eye-witnesses Gurbachan Singh PW1 and Deedar Singh PW2. Gurbachan Singh PW1-informant has stated in his evidence that on 30.10.2001 at about 7pm he was travelling from Kichha Bazar to his house as a pillion rider on the motorcycle, which was being driven by his son Gurjeet Singh (deceased). When they reached near Kichha railway station the appellants-accused came to the spot in a car and stopped the car in front of their motorcycle. The appellants-accused Jagdeep @ Deepa and Manjeet Singh armed with fire-

arms in their hands alighted from the front seat of the car. The appellants Harbans Singh and Jaswant Singh alighted from the rear seat of the car. The appellants Harbans Singh and Jaswant Singh asked them to give the petrol pump, otherwise they would grab it. Harbans Singh and Jaswant Singh instigated the appellants Jagdeep @ Deepa and Manjeet Singh that Gurjeet Singh would not allow them to get petrol pump till he is alive. On the instigation of Harbans Singh and Jaswant Singh, Jagdeep @ Deepa and Manjeet Singh fired upon the deceased, due to which the deceased sustained injuries and died at the spot. The prosecution has also adduced the evidence of Deedar Singh PW2, who is also eye-witness of the incident. He saw the incident at the spot. He has corroborated the evidence of Gurbachan Singh PW1. Deedar Singh PW2 had a transport office at Haldwani road, Kichha adjacent to the place of occurrence and he was in his office at the time of incident.

11. Learned senior counsel for the appellants contended that the presence of Gurbachan Singh PW1 at the spot is very doubtful because the deceased was his young son and he saw the entire incident but he did not try to intervene in the matter and did not try to save his son from the appellants. It was further contended that according to the prosecution the deceased fell down on the ground after sustaining firearm injuries and the father of the deceased did not touch him and he did not take him to the hospital to save the life of his son. It was further contended that the conduct of Gurbachan Singh PW1 apparently reveals that he was not present at the relevant time

and he had not seen the incident, especially when he is the father of the deceased. Learned Addl. G.A. for the respondent-State refuted the contention. It has come in the evidence that Gurbachan Singh PW1 was not having any arm at the time of incident. Strictly speaking the case is not of circumstantial evidence. Human behaviour varies from person to person. Different people behave and react differently in different situations. Human behaviour depends upon the facts and circumstances of each case. How a person would react and behave in a particular situation can never be predicted. Every person who witnesses a serious crime reacts in his own way. Some are stunned, some become speechless and some stand uprooted from the spot. There is no set of rules of natural conduct. The appellants-accused were armed with deadly weapons and it is natural that Gurbachan Singh PW1 could not come forward to save his son, particularly when they were causing murderous assault upon the deceased. Only on the ground that Gurbachan Singh PW1 remained silent and he did not intervene in the melee cannot be concluded that he was not present at the spot. In the case of **Ashok Kumar Pandey Vs. State of Delhi 2002 (4) SC 76,** the father of the deceased was eye-witness of the incident and he was unarmed. The father of the deceased heard cries of his daughter whereupon he immediately rushed towards the place of occurrence and found that the accused was inflicting stab wounds on his daughter with a knife while she was bleeding profusely. The accused came towards him in a state of anger with knife in his hand and the eye-witness retraced his steps. At this stage, the accused ran away

from the place of occurrence. It was pointed out that the father of the deceased saw the accused inflicting injuries in his daughter and he did not take steps to rescue her. It was submitted that the conduct of the eye-witness was unnatural, which shows that he was not present at the place of occurrence. In these circumstances of that case, it was held by the Hon'ble Supreme Court that it cannot be said to be unnatural conduct if he could not take steps to save the life of his daughter as he being unarmed, as an ordinary normal human being, could not have taken risk of his life at the hands of the accused, which was so imminent. In the case of **Balbir Singh & others Vs. State of Punjab & others 2005 (9) SCC 299**, the eye-witness (son of the deceased) and the deceased were coming back from the field. The accused persons emerged near the field and inflicted fatal injury on the person of the deceased with deadly weapons. The deceased died at the spot. It was pointed out that since the son of the deceased did not intervene in the fight, hence his presence was doubtful. The Hon'ble Apex Court has held that the evidence of son of the deceased cannot be disbelieved for not having intervened in the melee as there were four assailants who were armed with weapons. In the case in hand, the medical report of the deceased shows that the deceased-Gurjeet Singh sustained two fire-arm injuries on vital part of his body. Perusal of the injury report as well as the evidence of medical officer reveals that the gunshots were through and through and there was no chance of escape from death. Gurbachan Singh PW1 would have assumed that his son has died at the spot and he would have also believed that there would be no escape of his life.

As such, he would not have taken him to the hospital. In view of the above, the contention raised by the learned senior counsel for the appellants has no force.

12. Learned senior counsel for the appellants contended that the prosecution has not produced the independent witnesses to corroborate the fact of incident. It was further contended tat it has come in the evidence that Bhagat Singh, Kuldeep Singh and Ashok Singh were also present at time of incident, but they were not produced before the court. It was also contended that the prosecution has not adduced the evidence of other witnesses of the locality. It was further contended that the eye-witnesses of the prosecution namely, Gurbachan Singh PW1 and Deedar Singh PW2 are related to the deceased. Gurbachan Singh PW1 is the father of the deceased-Gurjeet Singh and Deedar Singh PW2 is the nephew of the Gurbachan Singh PW1. It was further contended that Gurbachan Singh PW1 and Deedar Singh PW2 who are said to be the eye-witnesses of the incident, are interested witnesses as they are related to the deceased. It was contended on behalf of the appellants that the prosecution could have adduced the evidence of independent witnesses who were also present at the time of incident. Learned Addl. G.A. refuted the contention. It has been alleged in the FIR that Bhagat Singh, Kuldeep Singh and Ashok were also present at the spot alongwith Deedar Singh PW2. Gurbachan Singh PW1 has also admitted that Bhagat Singh and Kuldeep Singh are also related to the deceased. It is not always necessary to multiply the evidence of the incident on the same point. It has to be seen what is

the quality of the witnesses. It is the quality of the evidence and not the quantity, which is required. If the evidence available on record is otherwise satisfactory in nature and can be said to be trustworthy then increase in the number of witnesses cannot be the requirement of the case. It has now almost become a fashion that the public is reluctant to appear and depose before the court especially in criminal cases because of varied reasons. Criminal cases are kept dragging for years to come and the witnesses are harassed lot. They are being threatened, intimidated and at the top of all they are subjected to unnecessary lengthy cross-examination. So, the witnesses avoid to come to the court. The evidence of prosecution witnesses is consistent and nothing had been elicited from their cross examination which may render their evidence unreliable. The evidence of the prosecution witnesses is credible and cogent. So far as the contention regarding the interested or related witnesses is concerned, it is true that Gurbachan Singh PW1 and Deedar Singh PW2 are related to the deceased, but the evidence of these eye-witnesses cannot be discarded on this ground alone. There is no rule of law or prudence which requires that the evidence of a close relation must be discarded for the simple reason i.e. they are related to each other. We have no reason to disbelieve their testimony. Similarly, being relatives, it would be their endeavour to see that the real culprits are punished and normally they would not implicate wrong persons in the crime, so as to allow the real culprits to escape unpunished. In the case of **State of Punjab Vs. Karnail Singh** reported in **2004 SCC**

(Cri) P/135 the Hon'ble Apex Court has held as under:-

> *"8. We may also observe that the ground that the witnesses being close relatives and consequently, being partisan witnesses, should not be relied upon, has no substance. This theory was repelled by this Court as early as in Dalip Singh v. State of Punjab reported in AIR 1953 SC 364 in which surprise was expressed over the impression which prevailed in the minds of the Members of the Bar that relatives were not independent witnesses. Speaking through Vivian Bose, J., it was observed: (AIR p. 366:-*
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> > *25. We are unable to agree with the learned Judges of the High Court that the testimony of the two eyewitnesses requires corroboration. If the foundation for such an observation is based on the fact that the witnesses are women and that the fate of seven men hangs of their testimony, we know of no such rule. If it is grounded on the reason that they are closely related to the deceased we are unable to concur. This is a fallacy common to many criminal cases and one which another Bench of this Court endeavoured to dispel in - Rameshwar v. State of Rajasthan reported in AIR 1952 SC 54 (AIR at p. 59). We find, however, that it unfortunately still persists, if not in the judgments of the courts, at any rate in the arguments of counsel."*

9. Again in Masalti v. State of U.P. AIR 1965 SC 202 this Court observed:-

> *"But it would, we think, be unreasonable to contend that evidence given by witnesses should be discarded only on the ground that it is evidence of partisan or interested witnesses. The mechanical rejection of such evidence on the sole ground that it is partisan would invariably lead to failure of justice. No hard and fast rule can be laid down as to how much evidence should be*

appreciated. Judicial approach has to be cautious in dealing with such evidence; but the plea that such evidence should be rejected because it is partisan cannot be accepted as correct."

In view of the above discussions, we do not find any force in the contentions advanced by the learned senior counsel for the appellants.

13. It was further contended that the FIR discloses that all four accused persons had fired upon the deceased and the deceased fell down on the ground. When the evidence of the prosecution was recorded it was stated in the evidence that two accused persons Jagdeep @ Deepa and Manjeet Singh had fired upon the deceased with the fire-arms. Harbans Singh and Jaswant Singh got alighted from the back seat of the car and on the exhortation of Harbans Singh and Jaswant Singh, the appellants Jagdeep @ Deepa and Manjeet Singh fired upon the deceased. It was further contended that the FIR nowhere indicates that the fire-arm injuries were caused only by the appellants Jagdeep @ Deepa and Manjeet Singh. Learned Addl. G.A. refuted the contention. It is well settled position of law that the FIR is not the encyclopedia in which all the details should be mentioned. If the genesis of the incident has been mentioned in the FIR, it is sufficient. The FIR is lodged only to give the motion to the investigation. It is not reasonably expected that the scared eye witness especially father of the deceased would be able to give meticulous and the precise account of details of incident that landed on the deceased. The informant has only narrated the summary of the incident. Gurbachan Singh PW1 had

seen his young son dying at the spot by the fire-arm injuries. It would be natural that he would be upset from the incident of murder of his son. Perusal of the FIR reveals that the informant has indicated the broad features of the incident. Thus, it cannot be held that the appellants are entitled to be acquitted on the ground that Gurbachan Singh PW1 has not mentioned the minor details of the incident in the FIR. It is pertinent to mention here that the statement of Gurbachan Singh - informant itself was recorded under section 161 Cr.P.C. by the Investigating Officer Harish Mehra PW7 on 31.10.2001. The statement of Deedar Singh PW2 was recorded under section 161 Cr.P.C. by the I.O. on the next day of the incident. They have given the vivid details of the incident as narrated in the evidence of both eye witnesses before the I.O. and the court. The prosecution witnesses have stated in their evidence that appellants Jagdeep @ Deepa and Manjeet Singh were having fire-arms in their hands and on the instigation of appellants (Harbans Singh and Jaswant Singh), the appellants Jagdeep @ Deepa and Manjeet fired upon the deceased. If the statement would not have given to the I.O. the counsel for the appellants would have confronted the eye-witnesses i.e. Gurbachan Singh PW1 and Deedar Singh PW2 as to why they have not given this statement to the I.O. under section 161 Cr.P.C. There is no such cross examination on the part of the appellants so it cannot be said that both the eye-witnesses have given a different version so as to bring the prosecution case in accordance with the findings of autopsy surgeon. Thus, the statement of Gurbachan Singh PW1 was recorded on the same day immediately after the incident. It is

settled position of law that FIR is not repository of everything and if the minute details of occurrence are not mentioned in it, the same can not make the prosecution case doubtful. In view of the above, it cannot be held that the appellants are entitled to be acquitted on the ground that the minor details of incident has not been indicated in the FIR. As such, there is no force in the contention advanced by the leaned senior counsel for the appellants.

14. It was further contended that the motorcycle was taken into possession on the very day of incident vide Ex.ka.15. It was further contended that according to the inquest report the said motorcycle was lying near the dead body of the deceased. In view of this entire evidence becomes unreliable. Learned Addl. G.A. refuted the contention. The following question and answer was made in the column of inquest report:-

LkEifr RkFkk mu gfFk;kjks dh lwph tks “ko esd ;k mlds ikl feys gSa vkSj mlds O;oLFkkiu dh fof/k	Ekrd dh yk”k ds ikl ghjks gks.Mka LisyUMj ;w],] 06 3611 fxjh gSa ftls dcts es fy;k x;k

15. The above endorsement reveals that the motorcycle was recovered near the dead body of the deceased. It does not mean that it was recovered at the time of preparation of inquest report. At the time of preparation of inquest report, the I.O. had to mention as to what articles or weapons were recovered from the dead body or near the dead body. If any such weapon had been recovered before preparation of the inquest report it would be obligatory to mention that

fact in the aforesaid column of the inquest report. According to Ex.ka.15 the motorcycle was taken into possession on 30.10.2001 whereas PW1 has also corroborated this fact in his evidence. Thus, this fact does not erode the credible and cogent evidence of the prosecution. This fact is too feeble and on the basis of which the credible and cogent ocular eye-account of the prosecution cannot be rejected.

16. Learned senior counsel for the appellants contended that Karnel Singh who scribed the FIR was a chance witness. It was further contended that his presence at the time of scribing the report was also doubtful. Learned Addl. G.A. refuted the contention. Gurbachan Singh PW1 has categorically stated that immediately after the incident he got the report scribed by Karnel Singh. It is also in the evidence that he belongs to 'Milak'. He further stated that he was also present at the spot, but nowhere he has stated that he saw the occurrence. The report has been written by Karnel Singh on the dictation of Gurbachan Singh PW1. Merely Karnel Singh being of other village or town it cannot be implied thereby that his presence is suspicious and his presence at the time of scribing the report was doubtful. Gurbachan Singh PW1 had been cross examined at length but nothing could be elicited from his evidence to discredit his testimony on this point. Hence, it cannot be said that Karnel Singh is a got-up scriber. Gurbachan Singh PW1 was a pillion rider on the motorcycle which was being driven by his son-deceased. The prosecution case disclosed by him is supported by his subsequent statements recorded under section 161 Cr.P.C. made before the police as well as in the court. He has supported the prosecution

case in all material particulars and no infirmity could be pointed out in his evidence. Deedar Singh PW2 is only a neighbour and he is having his office of transport adjacent to the place of occurrence and he is not related to the deceased. His presence at the spot cannot be doubted. He has consistently supported the prosecution case in his statement made before the police as well as in the court. Thus, both eye-witnesses have consistently supported the prosecution version in all material points. No infirmity could be pointed out in their evidence.

17. It was further contended that Dr. S. K. Mishra, Autopsy Surgeon has found five injuries on the person of the deceased. The appellants Jagdeep @ Deepa and Manjeet Singh fired upon the deceased due to which the deceased sustained injuries. It was further contended that the prosecution has come forward with the story that the deceased was going on his motorcycle and the appellants came at the spot in an Esteem Car and stopped their car in front of the motorcycle. Thereafter, Jagdeep @ Deepa and Manjeet Singh on the instigation of Harbans and Jaswant Singh fired upon the deceased. It was further contended that according to the medical report the deceased had sustained fire-arm injuries as indicated in para 8 of our judgment. It was further contended that according to the opinion of the medical officer injury no.1 & 2 could be caused by fire-arms. Learned senior counsel for the appellants contended that according to the evidence of Gurbachan Singh PW1 and Deedar Singh PW2 that the deceased after sustaining the gunshot injuries fell down on the ground with face upward. If the appellants-

accused were in front of the deceased and they fired from the front side of the body of the deceased, the injury no.1 & 2 mentioned in the preceding paragraph could not be possible by the fire-arms by the appellants. It was further contended that the postmortem and the evidence of Dr. S. K. Mishra, medical officer do not corroborate the prosecution case with regard to the cause of injuries. It was further contended that the medical evidence does not corroborate the prosecution case about the manner of the incident. The prosecution could not explain as to how the deceased sustained other injuries on his person. Learned Addl. G.A. refuted the contention. On due consideration of the submissions of the parties, we are of the view that the presence of Gurbachan Singh PW1 and Deedar Singh PW2 is not doubtful as it is quite possible that when the assailants fired upon the deceased he might have turned around as the deceased was a human being and not a statue. It is natural if a person is assaulted he would move in order to save himself or he may try to run away from the spot. In the natural consequences, the injuries would be possible on the side of the body or on the back of the deceased. Both eye witnesses of the incident have stated that the deceased fell down on the ground with face upwards. According to medical officer, the injury nos.3 to 5 could be caused by the blunt object or hard object. There is no dispute that the motorcycle was also available at the spot. When the deceased sustained fire-arm injuries he fell down on the ground. The death of the deceased was caused due to injury no.1 & 2 which were caused by fire-arms. Meaning thereby other injuries were not fatal to cause the death

of the deceased. It cannot be ruled out that the rest of

the injuries could have been caused by fall of the deceased after the incident on the ground at the place of occurrence. We cannot lose sight that the motorcycle was also there at the time of incident. The deceased could have tried to get hold of motorcycle while falling on the ground. The court cannot expect the panic suffered by the father or close relative of the deceased. Eye-witnesses has come forward with the vivid account of incident and how the fire-shots were fired. Thus, we do not find any inconsistency between the ocular testimony and the medical evidence.

18. Learned senior counsel for the appellants contended that even though assuming that the evidence of the prosecution was found credible and cogent the appellants are entitled to get the benefit of doubt as there was no motive for them to cause injuries on the person of the deceased. Learned Addl. G.A. refuted the contention. Gurbachan Singh PW1 has categorically stated that the appellants and he himself were business partners in the petrol pump. The appellants and Gurbachan Singh PW1 were running a petrol pump on partnership. It is revealed from the evidence that there was a talk regarding the transfer of petrol pump between the parties and Gurbachan Singh PW1 demanded an appropriate compensation for the same. Gurbachan Singh PW1 has further stated that the appellants threatened him that they would get the petrol pump forcibly. Thus, the prosecution has amply proved the motive against the appellants. Assuming for the sake of argument that the prosecution has failed to prove the sufficient motive against the appellants.

When the eyewitnesses of the occurrence consistently

supported the prosecution case, the question of motive would have lost its importance. It is well settled that in order to bring home the guilt of an accused, it is not necessary for the prosecution to prove the motive. The existence of motive is only one of the circumstances to be kept in mind while appreciating the evidence adduced by the prosecution. If the evidence of the witnesses appears to be truthful and convincing, failure to prove the motive is not fatal to the case of the prosecution. It is also well settled that establishment of motive is not sine qua non for proving the prosecution case. It was held in **Yunus Vs. State of M.P. SCC 2003 (1) p/429** :-

> *"The prosecution in the present case has failed to prove the motive. Failure to prove motive for crime in our view is of no consequence. The role of the accused persons in the crime stands clearly established. The ocular evidence is very clear and convincing in this case. The illegal acts of the accused persons have resulted in the death of a young boy of 18 years. It is also well settled law that establishment of motive is not sine quo non for proving the prosecution case."*

The Hon'ble Apex Court has affirmed the above view in **Bhimapa Chandappa Hosamani Vs. State of Karnataka 2007 (1) SCC(Cri) 456).**

Therefore, we do not find any force in the contention raised by learned senior counsel for the appellants.

19. It was further contended by the appellants that if really the incident was reported at 7:30pm on 30.01.2001 i.e. on the day of incident, then surely the inquest would have been prepared on the same day as there was sufficient light according to Gurbachan Singh PW1 and Deedar Singh PW2. It was further contended that the I.O. has given a lame excuse for preparing the inquest report on the following day of the incident. It was further contended that the FIR is ante-timed and dated. Learned Addl. G.A. refuted the contention. It is pertinent to mention here that there is no enmity of the police with the appellants. There is no reason why the police would record the ante-timed FIR. The prosecution has filed the copy of the G.D. which also reveals that the FIR was lodged at 7:30pm. The inquest report prepared on the following morning also indicates at page two that an FIR has been lodged at the police station on 30.10.2001 by Gurbachan Singh and a case no.969/2001 has been registered under section 302 IPC. The I.O. started to prepare the inquest report at about 6am in the next morning of the date of incident and the inquest was completed at 7:30am. If really the FIR would not have been recorded at 7:30pm, the police could not have reached at the place of occurrence on the same night and could not have prepared the site plan and could not have recorded the statement of Gurbachan Singh PW1. Harish Mehra PW7, I.O. has categorically stated that he reached at the spot immediately after recording the FIR. He collected the blood stained soil from the spot. He collected the hole of used cartridge. He also took into possession the motorcycle on the day of the incident. The evidence in that behalf is credible and cogent. Thus, the preparation of the inquest report on

the next day and deferring the preparation of inquest on causal ground by the I.O. is remissness on the part

of the I.O. and that does not effect the substratum of the prosecution story. Thus, we do not find any force in the contention raised on behalf of the appellants.

20. The incident took place at about 7pm on 30.10.2001. Gurbachan Singh PW1, who was present at the scene of occurrence, promptly reported the matter to the police at 7:30pm on 30.10.2001. The distance between the police station and the place of incident is about one furlong. Thus, there is no delay in lodging the FIR. The prompt FIR thus inspires confidence that it was not the outcome of any consultation or deliberation. FIR in a criminal case and particularly in a murder case is a vital and valuable piece of evidence for the purpose of appreciating the evidence led at the trial. The object of insisting upon prompt lodging of the FIR is to obtain the earliest information regarding the circumstances in which the crime was committed, including the names of the actual culprits and the parts played by them as also the names of the eye witnesses, if any. Delay in lodging the FIR often results in embellishment, which is a creature of an after thought. On account of delay, the FIR not only gets bereft of the advantage of spontaneity, danger also creeps in of the introduction of a coloured version or exaggerated story. The fact that the appellants committed the murder of the deceased further stand corroborated by the prompt FIR in which the name of the appellants have been shown.

21. It was contended that according to the prosecution the inquest report could not be prepared on the date of incident as there was no sufficient light at

the spot. It was further contended that Gurbachan Singh PW1 and Deedar Singh PW2 have categorically stated in their evidence that there were ‘sodium’ light near the place of incident and the sufficient light was available. The inquest report could have been prepared on the date of incident. The I.O. prepared the inquest report on the next day of incident. It was further contended that the preparation of inquest report on the next day totally belies the prosecution case. When the I.O. prepared the site-plan he could have also prepared the inquest report on the very date of incident. Learned Addl. G.A. refuted the contention. Perusal of the record reveals that the I.O. categorically stated in his evidence that he prepared the site-plan and recorded the statement of Gurbachan Singh PW1 at the spot. The inquest report could not be prepared due to insufficient light. We have already held in the preceding paragraph that there was no delay in lodging the report and the FIR was not ante-timed. The informant has already informed to the police station about the incident. In case, the inquest report was not prepared by the I.O. on the same day and the I.O. has given a lame excuse, the entire prosecution case cannot be thrown out on the score. It is well settled position of law that the testimony of the witnesses if found credible and cogent the defect on the part of the Investigating Officer cannot be taken into account. Even if the investigation is defective, that pales into insignificance when ocular testimony is found credible and cogent. In the case of a defective investigation the

court has to be circumspect in evaluating the evidence. But it would not be right in acquitting an accused person solely on account of the defect. To do so would

tantamount to playing into the hands of the investigating officer if the investigation designedly defective. {Reliance placed in **Dhanaj Singh @ Shera and others Vs. State of Punjab 2004 (3) SCC P-654, Chhotu Vs. State of Maharashtra 1997 CRI.L.J 4394 (SC) and Karnel Singh Vs. State of M.P. 1995 CRL.L.J 4173}.** In the case in hand the ocular testimony of the witnesses are credible and cogent. It has further held by the Hon'ble Supreme Court in **Rotash Vs. State of Rajasthan 2007 AIR SCW 44** that :-

> "32. The investigation was not foolproof but then defective investigation would not lead to total rejection of the prosecution case.
>
> 33. In Visveswaran v. State 2003 6 SCC 73, this has held:
>
> Before we notice the circumstances proving the case against the appellant and establishing his identity beyond reasonable doubt, it has to be borne in mind that the approach required to be adopted by courts in such cases has to be different. The cases are required to be dealt with utmost sensitivity, courts have to show greater responsibility when trying an accused on charge of rape. In such cases, the broader probabilities are required to be examined and the courts are not to get swayed by minor contradictions or insignificant discrepancies which are not of substantial character. The evidence is required to be appreciated having regard to the background of the entire case and not in isolation. The ground realities are to be kept in view. It is also required to be kept in view that every defective investigation need not necessarily result in the acquittal. In

> defective investigation, the only requirement is of extra caution by courts while evaluating evidence. It would not be just to acquit the accused solely as a result of defective investigation. Any deficiency or irregularity in investigation need not necessarily lead to Rejection of the case of prosecution when it is otherwise proved."

Thus, we are of the view that the contention of the learned senior counsel for the appellants-accused has no force.

22. It was further contended that the report submitted by the Asstt. Director, Vidhi Vigyan Prayogshala, Agra did not support the prosecution story. It was further contended that the learned trial court has erred in relying upon the said report Ex.ka.26 for holding the appellants guilty. Learned Addl. G.A. for the State refuted the contention. Harish Mehra PW7 – I.O. has stated in his evidence that he reached at the spot immediately after lodging the FIR at the police station and collected one live catridge of 315 bore and empty catridge of 315 bore and he prepared the recovery memos of the said catridge. Thereafter, he has further stated that the appellant Jagdeep @ Deepa and Manjeet were arrested on 11.11.2001 and he recovered a 12 bore C.M.P. from the possession of Jagdeep @ Deepa at the time of arrest. The other appellant Manjeet Singh was also having a 315 bore country-made pistol (C.M.P.) and there live 315 bore catridges in his possession at the time of arrest which was seized by the I.O. The Investigating Officer – Harish Mehra PW7 on the pretext that these arms would have been used in the commission of offence sent these arms to the Director, Forensic Lab, Agra. The empty cartridges recovered from the spot and live catridges recovered

from the possession of Manjeet Singh were compared and found that the empty catridge recovered from the spot was not fired from the country-made pistol

(C.M.P.) recovered from the possession of the appellant Manjeet Singh. The conclusion arrived by the expert does not belie the prosecution story. It can only be held that the arm recovered at the time of arrest was not used in the commission of offence. The incident took place on 30.10.2001 and the appellants Jagdeep @ Deepa and Manjeet Singh were arrested on 11.11.2001 after a lapse of 11 days. The finding of the report Ex.Ka.27 only leads to take an inference that the recovered C.M.P. from the possession of above appellant was not used in the commission of the crime. The eye witnesses have not stated that the appellants were having 315 bore CMP in their hands at the time of incident. All the eye-witnesses have stated in their evidence that the appellants Jagdeep @ Deepa and Manjeet Singh on the exhortation of other appellants fired upon the deceased by C.M.Ps. and merely because the C.M.Ps. have not been recovered during the investigation same cannot be the factor to discard the evidence of eyewitnesses. Therefore, we do not find any force in the contention raised on behalf of the appellants.

23. The learned trial court has convicted the appellants-accused Jagdeep @ Deepa and Manjeet Singh under section 25 Arms Act also. Harish Mehra PW7 has stated in his evidence that both the appellants were arrested on 11.11.2001. The personal search of appellant Jagdeep @ Deepa was conducted at the time of arrest and a 12 Bore countrymade pistol (c.m.p.)

was recovered from his possession. A C.M.P. of 315 bore and three live catridges were recovered from the personal search of Manjeet Singh appellant at the time

of arrest. The recovery memos of the recovered articles (Ex.Ka.1 to Ex.ka.5) were prepared at the spot and the seized articles were sealed separately. Harish Mehra PW7, I.O. has not been effectively cross examined on this point by the defence. The testimony of Harish Mehra PW7 is trustful and inspite of incisive cross examination nothing material has been brought to discredit his evidence. The trial court was justified in recording conviction on his evidence alone. It is well settled position of law that where the court is satisfied that the evidence of police can be independently relied upon then in such cases there is no prohibition in law that the same cannot be accepted without independent corroboration. The learned trial court was justified in holding that the appellant Jagdeep @ Deepa and Manjeet Singh are guilty under section 25 Arms Act.

24. The prosecution has amply proved by the evidence of Gurbachan Singh PW1 and Deedar Singh PW2 that appellants Harbans Singh and Jaswant Singh abetted the appellants Jagdeep @ Deepa and Manjeet Singh at the spot. It is also in the evidence that both the appellants Harbans Singh and Jaswant Singh had stated that Gurjeet Singh deceased would not allow them to take the petrol pump till he is alive. Both the appellants also instigated to acquire the petrol pump. Both the appellants Harbans Singh and Jaswant Singh exorted Jagdeep @ Deepa and Manjeet Singh to shot the deceased. To constitute the appellants, the abettor of the crime committed by another it has been clearly

established that all the appellants intended to commit the commission of the offence. In the instant case there is sufficient evidence that both the appellants

Harbans Singh and Jaswant Singh abetted the appellants Jagdeep @ Deepa and Manjeet Singh to fire upon the deceased. On their instigation appellants Jagdeep @ Deepa and Manjeet Singh fired upon the deceased. Thus, there is sufficient evidence to prove the guilt of the appellants Harbans Singh and Jaswant Singh under section 109 IPC.

25. In view of the foregoing discussion, we are completely in agreement with the findings recorded by the trial court. We are of the considered view that the trial court has rightly convicted the appellants-Jagdeep @ Deepa and Manjeet Singh under section 302 IPC & section 25 Arms Act. The trial court has further rightly convicted the appellants Harbans Singh and Jaswant Singh under section 302 IPC read with section 109 IPC. Therefore, we are of the view that the prosecution has established the guilt beyond reasonable doubt against the appellants and there is no infirmity in the judgment passed by the trial court.

26. Hence, the appeals are dismissed and the conviction and sentences awarded by the Trial court against the appellants are confirmed.

27. Let the lower court record be sent back to the court concerned for compliance. Compliance report be submitted within two months.

(J.C.S.Rawat, J.) (Rajeev Gupta, C.J.)

Dated 15th June, 2007
LSR